

SERVICE DATE – LATE RELEASE JULY 15, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42130

SUNBELT CHLOR ALKALI PARTNERSHIP

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Digest:¹ The Board sets a 60-page limit on final briefs, and extends the procedural schedule by one week.

Decided: July 15, 2013

BACKGROUND

Sunbelt Chlor Alkali Partnership (Sunbelt) challenges the reasonableness of rates and service terms established by Norfolk Southern Railway Company (NSR) for the transportation of chlorine from McIntosh, Ala., to New Orleans, La. By decision served on March 8, 2013, the Board granted Sunbelt's request to modify the procedural schedule, establishing a due date of July 19, 2013, for final briefs. By decision served on July 3, 2013, the Director of the Office of Proceedings (Director) directed the parties to limit their final briefs in this proceeding to 30 pages, including exhibits. On July 8, 2013, NSR submitted an appeal of the Director's decision, and Sunbelt submitted a reply on July 10, 2013.

DISCUSSION AND CONCLUSIONS

The Board will grant NSR's appeal in part by increasing the page limit on final briefs in this proceeding to 60 pages, including exhibits. For the reasons discussed below, we reject NSR's argument regarding the use of final briefs to answer allegedly improper rebuttal. However, because we are imposing a page limit on final briefs relatively close to the due date for briefs, we are increasing the page limit in this proceeding. For the same reason, we will extend the due date for final briefs by one week, to July 26, 2013.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

NSR claims that it requires a longer brief to address allegedly improper rebuttal evidence submitted by Sunbelt.² However, a closing brief is not the proper vehicle to raise such arguments. Those arguments should instead be addressed in a motion to strike.³

The Board's use of briefs in any proceeding is discretionary, see West Texas Utilities Co. v. Burlington Northern Railroad, NOR 41191, slip op. at 1 (ICC served Sept. 8, 1995), and in cases where the Board requires parties to file briefs, it does so to "focus the issues and thereby contribute to greater efficiency in analyzing the record," Wisconsin Power & Light Co. v. Union Pacific Railroad, NOR 42051, slip op. at 1 (STB served Nov. 15, 2000). See also FMC Wyo. Corp. v. Union Pac. R.R., NOR 42022, slip op. at 2 (STB served July 2, 1999) (permitting final round of simultaneous briefing, but limiting briefs to 25 pages). That is, the Board requires final briefs to narrow and focus the issues for the Board's benefit in analyzing the record, not to allow parties to answer allegedly improper rebuttal or have the "last word" on matters presented in the record, however novel or complex they may be.

Parties should be on notice that the Board's partial grant of NSR's request for additional pages depends on the timing of this proceeding in particular, and it will not have precedential effect in other proceedings.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NSR's appeal is granted in part, and the page limit on final briefs in this proceeding is set at 60 pages, including exhibits.
2. Final briefs are due by July 26, 2013.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

² Appeal 2-3.

³ The Board grants motions to strike rebuttal evidence in cases where such relief is warranted. See, e.g., Total Petrochemicals & Ref. USA, Inc. v. CSX Transp., Inc., NOR 42121, slip op. at 9 (STB served May 31, 2013).